

19 CI 01063

AOC-105 Doc. Code: CI
Rev. 1-07
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Commonwealth of Kentucky
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CIVIL SUMMONS

Case No. _____
Court ☒ Circuit ☐ District
County Jefferson ☒

JEFFERSON CIRCUIT COURT
DIVISION TEN (10) PLAINTIFF

JOHN P. ASKIN

FILED IN CLERK'S OFFICE
DAVID L. NICHOLSON, CLERK

FEB 15 2019

BY

DEPUTY CLERK

VS.

DEFENDANT

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

700 W. WASHINGTON STREET

INDIANAPOLIS, INDIANA 46204

Service of Process Agent for Defendant:

KENTUCKY SECRETARY OF STATE

SUMMONS BRANCH

700 CAPITAL AVENUE, SUITE 86

FRANKFORT, KENTUCKY 40601

THE COMMONWEALTH OF KENTUCKY
TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby notified a legal action has been filed against you in this Court demanding relief as shown on the document delivered to you with this Summons. Unless a written defense is made by you or by an attorney on your behalf within 20 days following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached Complaint.

The name(s) and address(es) of the party or parties demanding relief against you are shown on the document delivered to you with this Summons.

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CIVIL SUMMONS

Case No. **19 CI 01063**
Court ☒ Circuit ☐ District
County Jefferson

JEFFERSON CIRCUIT COURT
DIVISION TEN (10)

JOHN P. ASKIN

[REDACTED]

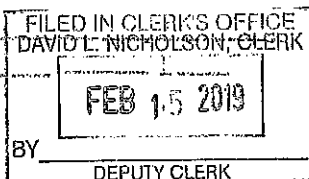
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VS.

UNIVERSITY OF NOTRE DAME, DU LAC

400 MAIN BUILDING

NOTRE DAME, INDIANA 46556



DEFENDANT

Service of Process Agent for Defendant:

KENTUCKY SECRETARY OF STATE

SUMMONS BRANCH

700 CAPITAL AVENUE, SUITE 86

FRANKFORT, KENTUCKY 40601

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COMMONWEALTH OF KENTUCKY
30th JUDICIAL DISTRICT

No. **190101063**

JEFFERSON CIRCUIT COURT
DIVISION

JUDGE

JEFFERSON CIRCUIT COURT
DIVISION TEN (10)

JOHN P. ASKIN
[REDACTED]
[REDACTED]

PLAINTIFF

v.

UNIVERSITY OF NOTRE DAME, DU LAC
400 Main Building,
Notre Dame, Indiana 46556

Serve: Kentucky Secretary of State
Summons Branch
700 Capital Ave., Ste. 86
Frankfort, Kentucky 40601

DEFENDANT

FILED IN CLERK'S OFFICE DAVID L. NICHOLSON, CLERK FEB 15 2019 BY _____ DEPUTY CLERK

and

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION
700 W. Washington Street
Indianapolis, Indiana 46204

DEFENDANT

Serve: Kentucky Secretary of State
Summons Branch
700 Capital Ave., Ste. 86
Frankfort, Kentucky 40601

JURY TRIAL DEMANDED

* * * * *

VERIFIED COMPLAINT

Comes the Plaintiff, John P. Askin (hereinafter "John Askin" or the "Plaintiff John Askin") being an adult resident of the Commonwealth of Kentucky, by the undersigned counsel, and for his Verified Complaint against the University of Notre Dame du Lac (hereinafter "Notre Dame" or "the Defendant Notre Dame"), and the National Collegiate

Athletic Association (hereinafter "NCAA" or "the Defendant NCAA") to obtain monetary redress for latent brain damage John Askin suffered (and recently discovered) as a direct and proximate result of the Defendants' negligence and reckless disregard for his health and safety during his five-years as a college football player.

Introduction

1. This case arises from the NCAA's and Notre Dame's (collectively referred to as "Defendants") reckless disregard for the safety of amateur collegiate football players generally and specifically for the safety of Plaintiff John Askin, a former offensive lineman for the Notre Dame football team between 1982 and 1986.

2. Defendants Notre Dame, its leadership, football coaches, athletic directors, and trainers, and the NCAA failed to notify, educate, and protect the plaintiff John Askin (and others) regarding the debilitating long-term and latent dangers of concussions, concussion-related injuries, sub-concussive injuries and repetitive blows to the head that result every day from amateur athletic competition in the form of football at the collegiate level.

3. The Notre Dame football coaches, athletic directors, and trainers magnified the risks to John Askin by actively training him and other Notre Dame players to lead with their helmets in games and practices.

4. The Notre Dame football coaches and trainers magnified the risks to John Askin and other players by administering to them a variety of controlled substances, including Supac, an anti-platelet pain medication mixed with amphetamines before, during, and after practices and games. Notre Dame's practice of administering Supac and other pain suppressants and amphetamines before and during practices and games meant

that John Askin and his teammates were unable to recognize pain and/or concussive or sub-concussive symptoms on the field sufficient to remove themselves from the field and seek help.

5. Notre Dame's practice of administering Supac and controlled substances to John Askin and other Notre Dame players violated federal law and demonstrates Notre Dame's reckless disregard for the health and safety of its college football players.

6. Notre Dame's practice of administering controlled substances to football players resulted in an elevated risk to John Askin and other players that included but is not limited to the following:

a. The use of Supac meant that Notre Dame players were at increased risk of failing to recognize sub-concussive and/or concussive head impacts during games and practices and playing through those events, thereby magnifying to the players the long-term risk and latent effects of sub-concussive and concussive head impacts.

b. The use controlled substances that suppressed pain, including an analgesic cream used on race horses, numbed the players and masked the pain the players would otherwise feel during practices and games such that the players, including John Askin, often did not and could not recognize if and when a significant injury occurred.

7. Defendants NCAA and Notre Dame knew or should have known between 1982 and 1986 the body of medical literature regarding the pathological and debilitating latent effects of mild traumatic brain injuries (referenced herein as "MTBI") caused by concussive and sub-concussive head impacts in college football.

8. Defendants NCAA and Notre Dame knew or should have known between 1982 and 1986 that the practice of teaching college football players to lead with their

helmets placed them at an elevated risk of long-term latent brain injury and traumatic encephalopathy.

9. Defendant Notre Dame knew or should have known between 1981 and 1986 that administering to John Askin before and during practices an analgesic mixed with amphetamine would place John Askin at an elevated risk of MTBI and the long-term latent effects of MTBI, including traumatic encephalopathy.

10. Plaintiff John Askin now suffers substantial symptoms of latent neurodegenerative brain disease, including symptoms of traumatic encephalopathy (sometimes called chronic traumatic encephalopathy or "CTE").

11. Those injuries were caused or substantially caused by the repetitive head impacts John Askin sustained as a five year football player at Notre Dame. At no time during his participation on the Notre Dame football team was John Askin in a position to understand or appreciate the risks of latent neurodegenerative brain disease caused by concussive and sub-concussive head impacts in football.

12. At no time did John Askin ever have the knowledge or authority to impose and implement for the Notre Dame football team health-related measures, treatment, and protocols to prevent and minimize the risks of latent neurodegenerative brain disease caused head impacts in football.

13. The published medical literature, as detailed later in this Complaint, contains studies of athletes dating back as far as 1928 and demonstrates a scientifically-observed link between repetitive blows to the head and latent neurodegenerative brain disease.

14. The earliest studies focused on boxers, but at least by 1933 and through the 1940s, 1950s, 1960s, 1970s, and 1980s, a substantial body of medical and scientific evidence had been developed specifically relating to the connection between sub-concussive and concussive blows in the sport of football and latent brain disease.

15. As early as 1933, the NCAA, of which Notre Dame is a member institution, published a medical manual authored by leading physicians in the United States. In part, that manual focused on the risks of latent brain disease associated with concussions in football. The NCAA recognized in that manual the long-term latent dangers of head injuries in football and, therefore, was well aware of the latent medical risks to college students who participated in football.

16. The Defendants have been for many years cognizant of the body of scientific evidence and its compelling conclusions that college football players are at greater risk for latent neurodegenerative brain disease caused by football.

17. The Defendants also had and have the resources and power to implement measures to prevent or minimize the risk of latent neurodegenerative brain disease to Notre Dame football players and specifically John Askin.

18. Neither the NCAA nor Notre Dame, however, did anything at all to inform or protect college football players, including John Askin, about the connection between latent brain disease and head impacts in football.

19. Notwithstanding the body of known scientific evidence and the resources and power possessed by the Defendants, the Defendants orchestrated a negligent and reckless approach to football practices and games that ignored the medical risks of latent brain disease to John Askin and actually magnified those risks on a regular basis.

20. As a direct result of the Defendants' tortious actions, Plaintiff John Askin now suffers from, among other things, the symptoms of latent neurodegenerative brain disease caused by football.

PARTIES

21. Plaintiff John Askin is an adult resident and citizen of the Commonwealth of Kentucky. Mr. Askin participated as a college football player at Notre Dame for the football seasons 1982-86.

22. Defendant Notre Dame is a multi-billion dollar faith-based Roman Catholic research university operating as a non-profit corporation and organized under the laws of the State of Indiana, with its principal place of business located at 400 Main Building, Notre Dame, Indiana 46556. The value of the Notre Dame Foundation increased in the 2017 by over 12.5% reaching a monetary value of \$13.2 billion dollars.

23. Notre Dame is operated and controlled by a Board of Trustees, but ultimately by the Board of Fellows, a group of six Order of the Holy Cross religious members and six lay members who have final say over the operation of Notre Dame.

24. As a member of the NCAA, and as a private institution of higher learning, Notre Dame had (and still has) co-extensive control over the implementation of NCAA rules and regulations, its own rules and regulations, and co-extensive responsibility to notify, educate, and protect the plaintiff John Askin, before, during, and after he played for the Notre Dame football team, regarding the latent long-term brain damage and disease that can and does arise from football.

25. On information and belief, Notre Dame generates from football alone at least \$78 million in gross revenue and \$46 million in profit every year, for which Notre Dame pays no taxes.

26. The Notre Dame football program currently is the second most valuable college football program in the world. The University of Texas is first.

27. In 2013, NBC Sports Group announced a 10-year contract extension to televise Notre Dame football games, doubling the length of its previous agreement. NBC and Notre Dame said the extension would begin in 2016 and run through the 2025 season. The contract is worth \$15 million annually for football alone.

28. The President of Notre Dame, John Jenkins, controls all intercollegiate athletics at Notre Dame, and the Athletic Director reports directly to the President.

29. On information and belief, the current Head Coach of the Notre Dame football program receives an annual salary in excess of \$3,000,000, which is on information and belief approximately six times the salary of the President (or any other academic officer) of Notre Dame.

30. Defendant NCAA is an unincorporated association with its principal office located at 700 W. Washington Street in Indianapolis, Indiana and with member institutions in every state. The NCAA is the governing body of collegiate athletics and oversees twenty-three college sports and over 400,000 students who participate in intercollegiate athletics. More than 1,000 colleges are members of the NCAA and submit to NCAA authority on that basis, including but not limited to the Defendant Notre Dame.

31. In 2010, the NCAA entered into an exclusive television and media rights contract with CBS and Turner Broadcasting. Over the 14-year term contract, the NCAA is to

receive \$10.8 billion. Similarly, in 2011, the NCAA entered into a multi-media agreement with ESPN, which is to provide for payments totaling \$500,000,000 over the life of the 14-year contract. On information and belief, during the 2017 fiscal year, Defendant NCAA received non-taxable revenues totaling over \$1.1 billion dollars.

JURISDICTION AND VENUE

Damages Amount

32. This Court has jurisdiction over this controversy, pursuant to KRS 24A.120(1), because the damages that are alleged in this Verified Complaint and at the trial of this case will be proven to have been incurred by John Askin far exceed the \$5,000 jurisdictional limits of this Court as established by the statutory law of the Commonwealth of Kentucky.

Jurisdiction and Venue over Plaintiff John Askin and Defendant NCAA

33. This Court has jurisdiction over the Plaintiff John Askin as a citizen of the Commonwealth of Kentucky and this Judicial District at the time the latent injuries materialized and their ramifications became irreversibly existent.

34. This Court has jurisdiction over the NCAA, which has the power to be sued in Kentucky pursuant to KRS 273A.035(1), and because the NCAA is a citizen of the Commonwealth of Kentucky by virtue of the fact that many NCAA institutions are located in Kentucky and this Judicial District, including but not limited to the University of Louisville.

35. This Court also has subject matter jurisdiction over this case, because the Plaintiff John Askin is a citizen of Kentucky and Defendant NCAA is a citizen of Kentucky.

Jurisdiction and Venue over Defendant Notre Dame

36. Jurisdiction over Defendant Notre Dame is proper pursuant to KRS 454.210, et. seq., because Defendant Notre Dame conducts ongoing business activities with this Commonwealth and Judicial District. On information and belief, Notre Dame has repeatedly and publicly fashioned itself as a “National University” reporting on its website that over 90% of its students are not citizens of Indiana. Further for over a century it has knowingly and intentionally conducted business of all sorts in multiple legal jurisdictions throughout the United States including, but not limited to, the Commonwealth of Kentucky and this Judicial District.

37. Over the years Notre Dame’s athletic teams have contracted to play and played as a paid participant in this Judicial District (Louisville) against the University of Louisville in hundreds of collegiate basketball, volleyball, soccer and other athletic games both before and after they joined as co-members of the Atlantic Coast Conference (“ACC”).

38. For over 80 years, Notre Dame’s basketball teams have competed against the University of Kentucky in the venue of this Court (Louisville) at the old Armory (presently a/k/a Louisville Gardens), beginning in the 1936-37 season and continuing nearly every year until through the 1948-49 season (during these years the old Armory was the largest indoor basketball arena in America).

39. For twenty years, from 1960-61 through the 1981-82, Notre Dame’s basketball teams played the University of Kentucky in Louisville’s Freedom Hall in an annual post-Christmas pre-New Year’s Day game.

40. On information and belief, Notre Dame is contractually committed to future athletic contests within the Commonwealth of Kentucky against the Universities of Louisville

and Kentucky, specifically and including the fact that Notre Dame's football team is contracted and scheduled to appear in a nationally televised football game on September 2, 2019, in Cardinal Stadium on the University of Louisville campus.

41. Defendant Notre Dame is, therefore, subject to jurisdiction in the Commonwealth of Kentucky and venue in the Jefferson County (Louisville) state courts and is further subject to service of process through the routine statutory procedures applying to out-of-state entities doing business in Kentucky as are statutorily authorized by the Kentucky Secretary of State.

Factual Allegations Common To All Counts

42. This action seeks to recover exemplary and punitive damages for injuries sustained by John Askin as a result of the misconduct of the Defendants in connection with their fraud, reckless disregard and gross negligence to take effective action to protect John Askin from the latent and long-term effects of MTBI in college football.

43. At all material times relevant to this Complaint the Defendants knew or should have known about the risks to John Askin and other college football players of developing latent brain disease from MTBI in college football.

44. The Defendants failed to initiate policies or rules necessary to protect John Askin in the face of long-standing medical evidence regarding the need to do so.

45. Notre Dame failed to advise or warn its football-playing students, including like John Askin, about the long-term, life-altering latent brain disease for which he was at risk from MTBI in college football.

46. The Defendant NCAA negligently and recklessly failed to regulate, monitor, supervise and require its member institution, the Defendant Notre Dame, to protect and warn

its college football players, including John Askin, regarding the latent brain disease that can and does arise from MTBI in college football.

47. Between 1982 and 1986, Notre Dame, independent of the duty of the NCAA, failed to address any issue regarding the health and safety of college football players with respect to MTBI and actively encouraged tackling and/or playing methods that encouraged and/or caused MTBI to Notre Dame football players in practices and games. Notre Dame's conduct substantially increased the risk to John Askin that he would (and now does) suffer from latent brain disease at age 55.

Plaintiff John Askin

48. John Askin grew up in Louisville and played on the junior high school level at St. Bernard Catholic School. He was recruited as a 13 year old by Gerry Faust ("Faust") to play varsity football at Cincinnati's Archbishop Moeller High School, where Faust won 88.6% of football games over an 18-year period that included seven unbeaten seasons, four national high school championships, and five state high school championship titles in Ohio.

49. At age 13, John Askin enrolled at Archbishop Moeller High School, and the entire Askin family moved to Cincinnati. John Askin played for Faust for four years as a high school student.

50. On November 20, 1980 Faust became the head football coach of Notre Dame and soon thereafter recruited John Askin to play college football at Notre Dame, where John Askin played as an offensive lineman for the seasons 1982 through 1986.

51. In 1981, the entire Askin family returned to Louisville, and John Askin became a student and football player at Notre Dame.

The Purported Mission to Protect Student-Athletes

52. This is not the first brain injury crisis associated with college football. In 1885 and again in 1895, efforts were made to ban or reform college football based on deaths and brain injuries to college football players. In 1905, more than eighteen (18) collegiate football players died on the field and more than one hundred others sustained debilitating injuries, which inspired university administrators and others to debate whether football could be regulated and whether it should be outlawed altogether.

53. In 1906 the Intercollegiate Athletic Association of the United States (“IAAUS”) met for the purpose of protecting the health and safety of college football playing students from dangerous athletic practices.

54. Joining that effort, President Theodore Roosevelt convened a group of Ivy League Presidents and football coaches to discuss how the game could be made safer. The result was several subsequent meetings and the reformation of the IAAUS (that later became the NCAA) whose founding purpose was to protect the health and safety of students who participate in college athletics.

55. At the founding convention of the NCAA in 1909, Syracuse University Chancellor James Roscoe Day stated:

“The lives of the students must not be sacrificed to a sport. Athletic sports must be selected with strict regard to the safety of those practicing them. It must be remembered that the sport is not the end. It is incidental to another end far more important. We lose sight of both the purpose and the proportion when we sacrifice the student to the sport.”¹

¹ Quoting: Rodney Smith, *A Brief History of the NCAA's Role in Regulating Intercollegiate Athletics*, 11 Marq. L.Rev. 9, 12 (2000)

56. Since its inception, the NCAA has held itself out as the supervisory force and enforcement body over the conduct of intercollegiate football events and practices throughout the country. It voluntarily shouldered since inception a legal duty to protect the health and safety of student football players, including the Plaintiff John Askin.

57. Combined, the Defendants generate hundreds of millions of dollars in annual profits by organizing, sponsoring, and staging amateur football games with enrolled student-athletes, almost all of whom are between 18 and 22 years of age.

The Medical Science

58. Medical science, including world-renowned departments of medicine in NCAA member institutions, have known for many decades that repetitive and violent jarring of the head or impact to the head can cause sub-concussive and/or concussive brain injuries with a heightened risk of latent and long term, chronic neuro-cognitive sequelae.

59. Many member institutions of the Defendant NCAA, including the Defendant Notre Dame, offer and have offered academic and/or professional programs in neuroscience, psychology and/or psychiatry for many years.

60. The Defendants have known (or should have known) for many years that MTBI occurs in college football, that there are specific symptoms of MTBI, and that the Defendants should have a medical protocol in place on the sidelines and in the locker room to identify and respond to those injuries with physicians who are trained specialists in MTBI and its short-term and long-term effects.

61. The Defendants have known (or should have known) for many years that once a student suffers an MTBI in college football, that student is up to four times more likely to sustain a second MTBI.

62. The Defendants have known (or should have known) for decades that even a single sub-concussive or concussive blow may cause an MTBI, and the injured person often requires substantial time to recover.

63. The Defendants have known (or should have known) for many years that neuropathology studies, brain imaging tests, and neuropsychological tests on boxers and football players, including NCAA football players, have established that those who sustain repetitive head impacts often suffer unrecognized MTBI that result in any one or more latent neurodegenerative brain diseases that develop over many years. Those latent brain diseases include, but are not limited to, early-onset of Alzheimer's Disease, dementia, depression, deficits in executive and/or cognitive functioning, reduced processing speed, decline in attention and reasoning, loss of memory, sleeplessness, mood swings, personality changes, and the debilitating and latent disease known as CTE.

64. CTE involves the slow build-up of the Tau protein within the brain tissue that causes diminished brain function, progressive cognitive decline, and many of the symptoms listed above. CTE is also associated with an increased risk of suicide.

65. Published peer-reviewed scientific studies have shown that MTBI in college football are linked to significant risk for permanent latent brain disease.

66. As a football player at Notre Dame, plaintiff John Askin was subjected to repetitive head impacts in practices and games for the profit and promotion of the Defendants, yet he was never aware of the short-term and long-term health risk associated with those head impacts, was never educated by the Defendants regarding the risk, and was never furnished with appropriate health and safety protocols that would monitor, manage, and mitigate the

long-term latent brain disease risks associated with those head impacts while he played football at Notre Dame.

67. Those repetitive head impacts in practices and games to which John Askin was exposed placed him at an increased risk for developing the latent brain disease for which he has been recently diagnosed.

68. Notwithstanding their superior knowledge of the risks of latent brain disease to college football players and their absolute duty to protect players, including John Askin, the Defendants never once advised or warned John Askin regarding the latent brain disease risks associated with MTBI in college football or implemented any protocols that identified, managed or treated the MTBI sustained by Notre Dame college football players, including John Askin.

69. At no time while he was a player at Notre Dame or until he was diagnosed in 2018 did plaintiff John Askin ever know or suspect that he had been exposed to an increased risk of long-term latent neurodegenerative brain disease and the insidious and latent disease known as CTE.

70. Specifically, this was because the Defendants withheld that information from him, developed no protocol to effectively communicate and mitigate those risks, and were willfully blind eye to the risks to John Askin and other college football players for one purpose: to entertain the audience for Notre Dame football and to reap profits from Notre Dame football games and broadcast contracts.

Notre Dame Football Fostered and Aggravated MTBI

71. For more than 50 years, coaches around the country have known that a football player should not lead with his helmeted head. In 1967 the American Medical

Association Committee on Medical Aspects of Sports declared that coaches should not teach players to lead with their head. By 1976, the NCAA and the National Federation of State High School Associations passed a safety rule prohibiting initial contact with the head.

72. Despite this elementary rule, the Notre Dame coaching staff of 1982 through 1986 (a) did nothing to protect the neuro-cognitive health of John Askin, (b) never at any time discouraged players from leading with their helmets when tackling and blocking, and (c) actively taught players to use their helmet as a weapon or device when tackling and blocking.

73. On information and belief, the Notre Dame coaching staff accepted, praised, and rewarded tackling and blocking techniques that involved the use of the helmeted head against opposing players and teammates.

74. As a result, it was a common method during Notre Dame football games and practices for players to use their helmeted heads when tackling and blocking, to inflict on each other and opponents helmet to helmet hits of all kinds, which increased the substantial risk of MTBI in players that was never identified, monitored, or treated.

75. This practice by the Notre Dame football program aggravated the risk to John Askin and other Notre Dame football players for the following reasons:

(a) the Notre Dame players were taught and/or encouraged and/or not discouraged to play the game by using their helmeted heads as a weapon and/or implement that would injure opponents and themselves; and

(b) the Notre Dame football players were taught and required to continue to play in games and practices after they had sustained MTBI symptoms which were never identified, recognized, addressed, or treated.

76. If, for example, during practices or games a player on impact had his "bell rung" and/or was temporarily unaware of his surroundings, this meant nothing to the Notre Dame coaching staff. Players were ordered and expected to continue to participate in the practice or game. If a player failed to continue to participate or otherwise failed to abide by the coaches' instructions, the player risked his place on the Notre Dame football team, his scholarship, and his contractual right to attend classes at Notre Dame.

77. From 1982 to 1986, John Askin participated in full contact tackling drills, practices, scrimmages, and games at Notre Dame. Because of the practices and procedures of the Notre Dame football program, that program placed John Askin at an elevated risk of sustaining MTBI and the latent brain disease from which he now suffers.

78. At no time, however, did John Askin or the Notre Dame coaching and training staff ever recognize that any concussive symptom sustained by John Askin was an injury to be monitored, treated, or even acknowledged.

79. At no time while John Askin played football at Notre Dame did a Notre Dame football coach or trainer advise or send John Askin to see a neurologist to test for concussion symptoms or advise him on his neuro-cognitive health.

80. John Askin sustained four concussions as a player at Notre Dame that were recorded by Notre Dame, but not once did any Notre Dame coach or trainer (a) remove John Askin from a practice or game; (b) advise him of the short and long-term dangers of latent brain disease caused by MTBI in football; (c) hold him out of a practice or game as a result of a suspected concussive injury; or (d) do anything at all to protect his short-term and long-term neurocognitive health.

81. To the contrary, the standard policy of Notre Dame coaches and trainers was not to recognize concussive symptoms at all and to return John Askin and other football players into the practice or game as quickly as possible regardless of whether or not they had sustained any symptoms.

82. On information and belief, John Askin (and his teammates) sustained many more concussive and sub-concussive injuries while they played football on the Notre Dame team, but never recognized them at the time and were discouraged from reporting symptoms, because to report symptoms would be contrary to the code of Notre Dame football.

83. At no time while John Askin played football at Notre Dame did anyone (a) advise or educate him about what a concussion is; (b) advise or educate him about what concussion symptoms are; or (c) advise him about the risk of long-term latent brain disease from football.

84. Between 1982 and 1986, John Askin sustained other injuries while playing football at Notre Dame that were orthopedic and for which he received treatment. Those injuries included a broken ankle, two shoulder injuries, a low back contusion, a sprained left AC joint, a labrum tear, patellar tendinitis of the left knee, a contusion of the left humerus, and a medial collateral ligament sprain.

85. In response to all of these injuries, Notre Dame referred him to an orthopedic specialist, who on many occasions injected him with Marcain (an anesthetic injected into patients during surgery to alleviate pain) and Kenalog (a steroidal drug with multiple side-effects).

86. Not once did Notre Dame refer John Askin to any physician at all for concussive symptoms (or even to educate him on what concussive symptoms are), because

Notre Dame football refused to recognize and was willfully blind to the consistent occurrences of concussive symptoms in practices and games.

**Notre Dame Administered Controlled Substances
to John Askin that Showed a Reckless Disregard for his Health and Safety and
Placed him at an Elevated Risk for Latent Long-Term Brain Damage**

87. Long before John Askin played football at Notre Dame, federal law prohibited the sale or use of certain pharmaceuticals without a prescription and the proper supervision of physician. The obvious purpose of this regulatory regime was to protect the public from abuses related to the sale of powerful prescription medications.

88. Federal law protects the public from those drugs that have toxicity or other potentiality for harmful effects that make them unsafe unless under the supervision of a practitioner licensed by law to administer the drugs. Any oral prescription must be reduced promptly to writing and filed by the pharmacist and any refill of such a prescription must similarly be authorized.

89. The Comprehensive Drug Abuse Prevention and Control Act (the “Act”) imposes a sophisticated statutory regime to regulate the dispensation of certain controlled substances also used as legitimate medications that carry a greatly enhanced risk of abuse and addiction. The Act criminalizes violations of its regulations.

90. This regulatory regime protects the public against the dangers of abuse and addiction inherent in the use of controlled substances such as opioids and other powerful painkillers. The Act organizes these controlled substances into five separate categories, or schedules, that the DEA and FDA publish annually and update on an as-needed basis. The controlled substances in each schedule are grouped according to accepted medical use, potential risk for abuse, and psychological/physical effects.

91. Schedule IV controlled substances include Ambien, Valium, Librium and Halcion. Schedule III controlled substances include opioids and NSAIDs such as Vicodin and acetaminophen with codeine. Schedule II controlled substances include the opioids Codeine, Oxycodone and stimulants, such as amphetamine and methamphetamine.

92. To comply with the regulatory regime of the Act, those who are licensed to distribute the foregoing controlled substances must maintain effective control over the controlled substances, comply with State and local law, and satisfy other public health and safety considerations.

93. Many of the foregoing controlled substances cannot be re-filled except in a limited and regulated way, and the regulatory regime requires specific recordkeeping such that the practitioner licensed to dispense the controlled substance maintains a complete and accurate record of each substance manufactured, received, sold, delivered, or otherwise disposed. The recordkeeping requirement means that the person registered and authorized to dispense controlled substances must maintain records that also the name and amount of the substances distributed and dispensed, the date of acquisition and dispensing, certain information about the person from whom the substances were acquired and dispensed to, and the identity of any individual who dispensed or administered the substance on behalf of the dispenser.

94. The Act includes a comprehensive criminal regime to penalize violations of its rules and regulations such that every violation of the Act involves criminal penalties and fines.

95. Notre Dame assistant coaches and trainers illegally and without a prescription dispensed to football players, including John Askin, Schedule II, III and IV

prohibited drugs in violation of the Act. The Notre Dame assistant coaches and trainers distributed the drugs openly in jars and buckets without any supervision, prescriptions, controls or required record-keeping. The distribution occurred indiscriminately in multiple places, including within property owned, controlled and operated by Notre Dame. The distribution of the drugs occurred in the Notre Dame football locker room, the dressing room of the Notre Dame Stadium, during practices at the Notre Dame football practice facility, at practice facilities and stadiums in other states where Notre Dame was the visiting football team, and on airplanes when the Notre Dame football teams traveled to play at other colleges and universities.

96. Among the drugs dispensed by Notre Dame trainers and assistant coaches before and/or after practices and games in open containers and without any medical advice or record-keeping were the Schedule IV opioids Codeine, Oxycodone, stimulants such as amphetamine and methamphetamine, and Schedule III drugs such as Indocin, various forms of anabolic steroids, and Vicodin and Valium.

97. Prior to and during practices and games, assistant coaches and trainers illegally dispensed to John Askin an anti-platelet medication called Supac, and an analgesic cream used on race horses, both of which had the purpose and effect of masking pain.

98. Supac was a combination of aspirin, acetaminophen, and a codeine-like amphetamine. By administering Supac to John Askin on a regular basis, Notre Dame made John Askin unable to recognize pain and/or a concussive event on the field sufficient to remove himself from the field and seek help. This magnified the likelihood that John Askin would stay in a practice or game without recognizing that he had

sustained a concussive head impact. It also exposed him to an elevated and greater risk of repeated concussive events during the same game or practice and the latent neurodegenerative brain disease later in life from which he now suffers.

99. By administering to John Askin analgesic cream used on race horses, Notre Dame masked pain sustained by John Askin during practices and games and made him far more likely to remain in practices and games when he should have removed himself and sought medical attention.

100. Notre Dame violated federal law regarding the dispensing of controlled substances to 18 to 22 year old athletes for the sole purpose of enhancing their performance to win college football games for Notre Dame.

101. This is directly contrary to the ethos expressed by the Notre Dame President the Rev. John I. Jenkins, C.S.C., who stated on the university's website:

There are no universities that have done what Notre Dame aspires to do: to become a preeminent research University, to offer an unsurpassed undergraduate program, **and to infuse both with a religious and moral framework that imbues knowledge with the power to benefit human beings.** [Emphasis supplied]

The Defendants Knew or Should Have Known of the Risks to John Askin

102. Both before and after John Askin played football at Notre Dame, the NCAA and Notre Dame knew or should have known of the mounting literature and medical advice regarding the latent effects of MTBI and the need for disclosure to Notre Dame football players, pre-season baseline neuro-psychological testing, and safe return to play guidelines.

103. Beginning with studies on the brain injuries suffered by boxers in the 1920s, medical science has long recognized the debilitating effects of concussions and

other MTBI, and found that that repetitive head impacts can cause permanent brain damage and increased risk of long-term cognitive decline and disability.

104. In 1928, pathologist Harrison Martland described the clinical spectrum of abnormalities found in “almost 50 percent of fighters [boxers] . . . if they ke[pt] at the game long enough” (the “Martland study”). The article was published in the Journal of the American Medical Association. The Martland study was the first to link sub-concussive blows and “mild concussions” to degenerative brain disease.

105. In 1933, the NCAA itself published a medical manual by lead author Augustus Thorndike that acknowledged the risks of long-term brain disease in football players and boxers and the need for responsive regulations on the field and in the locker room to protect student football players from the consequences of head injury.

106. In 1937, the American Football Coaches Association published a report warning that players who suffer a concussion should be removed from sports demanding personal contact.

107. In 1948, the New York State Legislature created the Medical Advisory Board of the New York Athletic Commission for the specific purpose of creating mandatory rules for professional boxing designed to prevent or minimize the health risks to boxers. After a three year study, the Medical Advisory Board recommended, among other things, (a) an accident survey committee to study ongoing accidents and deaths in boxing rings; (b) two physicians at ring-side for every bout; (c) post-bout medical follow-up exams; (d) a 30-day period of no activity following a knockout and a medical follow up for the boxer, all of which was designed to avoid the development of “punch drunk syndrome,” also known at the time as “traumatic encephalopathy”; (e) a physician’s

prerogative to recommend that a boxer surrender temporarily his boxing license if the physician notes that the boxer suffered significant injury or knockout; and (f) a medical investigation of boxers who suffer knockouts numerous times

108. The recommendations were codified as rules of the New York State Athletic Commission.

109. In or about 1952, the Journal of the American Medical Association published a study of encephalopathic changes in professional boxers.

110. That same year, an article published in the New England Journal of Medicine recommended a three-strike rule for concussions in football (i.e., recommending that players cease to play football permanently after receiving their third concussion.)

111. In 1962, Drs. Serel & Jaros looked at the heightened incidence of chronic encephalopathy in boxers and characterized the disease as a "Parkinsonian" pattern of progressive decline.

112. A 1963 study by Drs. Mawdsley & Ferguson published in Lancet found that some boxers sustain chronic neurological damages as a result of repeated head injuries. This damage manifested in the form of dementia and impairment of motor function.

113. A 1967 study Drs. Hughes & Hendrix examined brain activity impacts from football by utilizing EEG to read brain activity in game conditions, including after head trauma.

114. Also in 1967 the American Medical Association Committee on Medical Aspects of Sports declared that coaches should not teach players to lead with their head.

115. In 1969 (and then again in the 1973 book entitled Head and Neck Injuries

in Football), a paper published in the Journal of Medicine and Science in Sports by a leading medical expert in the treatment of head injuries, recommended that any concussive event with transitory loss of consciousness requires the removal of the football player from play and requires monitoring.

116. In 1973, Drs. Corsellis, Bruton, & Freeman-Browne studied the physical neurological impact of boxing. This study outlined the neuropathological characteristics of "Dementia Pugilistica," including loss of brain cells, cerebral atrophy, and neurofibrillary tangles.

117. A 1975 study by Drs. Gronwall & Wrightson looked at the cumulative effects of concussive injuries in non-athletes and found that those who suffered two concussions took longer to recover than those who suffered from a single concussion. The authors noted that these results could be extrapolated to athletes given the common occurrence of concussions in sports.

118. By 1975, the number of head and neck injuries from football that resulted in permanent quadriplegias in Pennsylvania and New Jersey led to the creation of the National Football Head and Neck Registry, which was sponsored by the National Athletic Trainers Association and the Sports Medicine Center at the University of Pennsylvania.

119. In 1973, a potentially fatal condition known as "Second Impact Syndrome"—in which re-injury to the already-concussed brain triggers swelling that the skull cannot accommodate—was identified. It did not receive this name until 1984. Upon information and belief, Second Impact Syndrome has resulted in the deaths of at least forty football players.

120. By 1976, the NCAA and the National Federation of State High School

Associations passed a safety rule prohibiting initial contact with the head. On information and belief, neither the NCAA nor the Notre Dame football coaches and athletic department ever implemented or enforced this rule both during or after John Askin played college football.

121. Between 1952 and 1994, numerous additional studies were published in medical journals including the Journal of the American Medical Association, Neurology, the New England Journal of Medicine, and Lancet warning of the dangers of single concussions, multiple concussions, and/or football-related head trauma from multiple concussions. These studies collectively established that:

(a) repetitive head trauma in contact sports, including boxing and football, has potential dangerous long-term effects on brain function;

(b) encephalopathy (dementia pugilistica) is caused in boxers by repeated sub-concussive and concussive blows to the head;

(c) acceleration and rapid deceleration of the head that results in brief loss of consciousness in primates also results in a tearing of the axons (brain cells) within the brainstem;

(d) with respect to mild head injury in athletes who play contact sports, there is a relationship between neurologic pathology and length of the athlete's career; immediate retrograde memory issues occur following concussions;

(e) mild head injury requires recovery time without risk of subjection to further injury; head trauma is linked to dementia;

(f) a football player who suffers a concussion requires significant rest before being subjected to further contact; and, minor head trauma can lead to neuropathological

and neurophysiological alterations, including neuronal damage, reduced cerebral blood flow, altered brainstem evoked potentials and reduced speed of information processing.

122. In the early 1980s, the Department of Neurosurgery at the University of Virginia, an NCAA member institution, published studies on patients who sustained MTBI and observed long-term damage in the form of unexpected cognitive impairment. The studies were published in neurological journals and treatises within the United States and received national attention.

123. In 1982, the University of Virginia and other institutions conducted studies on college football teams that showed that football players who suffered MTBI suffered pathological short-term and long-term damage. With respect to concussions, the same studies showed that a person who sustained one concussion was more likely to sustain a second, particularly if that person was not properly treated and removed from activity so that the concussion symptoms were allowed to resolve.

124. The same studies showed that two or more concussions close in time could have serious short-term and long-term consequences in both football players and other victims of brain trauma.

125. In 1986, Dr. Robert Cantu of the American College of Sports Medicine published Concussion Grading Guidelines, which he later updated in 2001.

126. By 1991, three distinct medical professionals/entities, all independent from the NCAA—Dr. Robert Cantu of the American College of Sports Medicine, the American Academy of Neurology, and the Colorado Medical Society—developed return-to-play criteria for football players suspected of having sustained head injuries.

127. In 1999, the National Center for Catastrophic Sport Injury Research at the

University of North Carolina conducted a study involving eighteen thousand (18,000) collegiate and high school football players. The research showed that once a player suffered one concussion, he was three times more likely to sustain a second in the same season.

128. In 2004, a convention of neurological experts in Prague met with the aim of providing recommendations for the improvement of safety and health of athletes who suffer concussive injuries in ice hockey, rugby, football, and other sports based on the most up-to-date research. These experts recommended that a player never be returned to play while symptomatic, and coined the phrase, “when in doubt, sit them out.”

129. This echoed similar medical protocol established at a Vienna conference in 2001. These two conventions were attended by predominately American doctors who were experts and leaders in the neurological field.

130. The University of North Carolina’s Center for the Study of Retired Athletes published survey-based papers in 2005 through 2007 that found a strong correlation between depression, dementia, and other cognitive impairment in professional football players and the number of concussions those players had received.

131. A 2006 publication stated that “[a]ll standard U.S. guidelines, such as those first set by the American Academy of Neurology and the Colorado Medical Society, agree that athletes who lose consciousness should never return to play in the same game.”

132. Although the Defendants knew for decades of the harmful long-term and latent effects of MTBI on student-athletes, they ignored these facts and failed to institute any meaningful method of warning and/or protecting college football players, most likely because the revenue from football was so great, and the business of college football so

profitable.

133. On information and belief, during every decade referenced above, the Defendants NCAA and Notre Dame (including but not limited to its football program) had access to the foregoing information.

134. Information collected by the NCAA's own injury surveillance data confirmed that high rates of concussions and head injuries, with concussions accounting for 7% of all football practice and game injuries and between 7% and 14% of all hockey injuries in the 2005-2006 season.

135. In 2003, two separate studies partially funded by the NCAA concluded the following: (1) that athletes required a full seven days to regain their pre-concussion abilities after sustaining a concussion; and (2) that NCAA football players with a history of concussions were at an increased risk of sustaining additional future concussions, and thus, should receive more information about this risk before deciding whether to continue playing football. One of the studies further recommended the use of standardized assessment tools to guide medical staff in evaluating and treating student athletes.

**The NCAA and Notre Dame Ignored Mounting Medical Evidence and
Refused to Implement Any of the Recommended Guidelines**

136. Despite the foregoing research studies and expert recommendations, the NCAA ignored the fact that member institutions encouraged and actually required players to play in the very same game or practice in which the player sustained a concussion or a likely concussion.

137. Despite the foregoing research studies and expert recommendations, Defendants NCAA and Notre Dame failed to implement any guidelines or rules to prevent repeated concussions and failed to educate players about the increased risk of concussive

and sub-concussive injury in football, particularly under circumstances when the helmet is used as a weapon when tackling, blocking, or running with the football.

138. Despite the forgoing research, neither the NCAA nor Notre Dame recommended return to play procedures or took any action to educate student athletes subject to its rules on the risks of repeated head trauma.

139. Despite the foregoing research studies and expert recommendations, Notre Dame conducted a football program that proactively rewarded John Askin for inflicting on himself and others head impacts using the crown of his helmet as a weapon in practices and games. Specifically, the Notre Dame coaches taught John Askin to lead with his helmeted head such that he increased the risk to himself and others that he and they would sustain sub-concussive and concussive injuries and the latent long-term brain disease from which John Askin now suffers. The only reason Notre Dame coaches taught and demanded this of John Askin was for the purpose of advancing the Notre Dame football program by winning games, obtaining fame, and gaining millions of dollars in revenue for Notre Dame.

140. Despite the foregoing research studies and expert recommendations, neither the NCAA nor Notre Dame ever contacted John Askin after he had graduated from Notre Dame to inform him that he had been exposed to an increased risk of long-term brain damage by the concussive and sub-concussive blows sustained while playing football for Notre Dame.

141. Later, after John Askin had left Notre Dame, neither Notre Dame nor the NCAA accepted or adopted any of the internationally accepted guidelines regarding concussion management and return to play protocols, thereby endorsing and allowing the

ongoing practices of its member institutions, including Defendant Notre Dame. Rather, the NCAA rejected the international recommendations and continued to promote individualized approaches, such as the active encouragement by Notre Dame football that its student-athletes inflict head injuries on themselves and others during games and practices for the sole purpose of winning games, obtaining fame, and making money for Notre Dame.

142. On information and belief, Notre Dame continued to conduct its football program in the exact same way from 1982 through 2010 and, like the NCAA, ignored all medical evidence that required Notre Dame to fulfill its obligation to protect the neurological health of students who participated in the football program.

143. It was not until April 2010 that the NCAA made changes to its concussion treatment protocols, this time passing legislation that required its member institutions to have a Concussion Management Plan (“CMP”) in place for all sports.

144. Under that new policy, schools were required to have a CMP on file “such that a student-athlete who exhibits signs, symptoms, or behaviors consistent with a concussion shall be removed from practice or competition and evaluated by an athletics healthcare provider with experience in the evaluation and management of concussions.”

145. The policy further states that students diagnosed with a concussion “shall not return to activity for the remainder of that day” and that medical clearance would be determined by the team physician.

146. Finally, the policy required students to sign a statement “in which they accept the responsibility for reporting their injuries and illnesses, including signs and symptoms of concussion” to medical staff and noted that students would be provided

educational materials on concussions during the signing process.

147. The policy is too late for John Askin.

148. Moreover, Defendant NCAA passed the responsibility for developing prevention and management procedures on to its member schools, such as the Defendant Notre Dame, and placed the burden of actively seeking medical attention on student-athletes, most of whom are less than 22 years old and are beholden to coaches for both a place on the team roster and the right to attend the school.

John Askin's Post-Notre Dame Life

149. Following his final collegiate season, John Askin signed an NFL contract for the 1987-88 and 1988-89 playing seasons and participated in the New England Patriot's 1987 training camps. John Askin injured his back in late August 1987. Shortly after the injury, the Patriots waived Askin.

150. On September 16, 1987, the Cleveland Browns and John Askin agreed to a contract for the 1987-88 season. In the Browns' pre-season fall training camp, John Askin injured a knee which ultimately became a career-ending injury.

151. Thereafter, John Askin was employed with Nationwide Insurance Company in Louisville and became a regional manager in the mid-1990s. Because of extreme orthopedic injuries, John Askin retired from the insurance business and began working at the BB&T Bank's main branch in Louisville.

152. By 2005, John Askin and BB&T Bank had determined that John was permanently disabled from orthopedic injuries. There was no evidence at this time that John Askin had suffered any mental malfunction or latent brain damage.

153. On January 16, 2008, John Askin received permanent disability from the

U.S. Social Security Administration based exclusively on orthopedic injuries. Since that time, and for the last 10 years, John Askin and his family have lived on permanent disability checks.

154. On February 15, 2018, John Askin was diagnosed by a board-certified neurosurgeon and neurologist with neurodegenerative disease that is most likely CTE.

COUNT I – NEGLIGENCE
(Plaintiff John Askin vs. Notre Dame and NCAA)

155. Plaintiff John Askin incorporates by reference, as if fully set forth herein, Paragraphs 1 through 154 as set forth above.

156. From its inception and by virtue of its role as the governing body of collegiate athletics, the Defendant NCAA has historically assumed a duty to protect the health and safety of all student-athletes at its member institutions.

157. The NCAA also assumed a duty of care by voluntarily taking steps to protect and promote the health and safety of its players, including promulgating safety handbooks and regulations. That duty included an obligation to supervise, regulate and monitor the rules of its governed sports and provide appropriate and up-to-date guidance and regulations to minimize the risk of injury to collegiate football players.

158. Defendant Notre Dame assumed similar duties toward all its student football players, including John Askin.

159. Defendant NCAA had an additional duty to educate Notre Dame and Notre Dame football players, including John Askin, on the proper ways to evaluate and treat concussive events during football games and practices, including repetitive sub-concussive and concussive head impacts.

160. The NCAA's duty further included a duty to warn student-athletes of the

dangers of sub-concussive and concussive injuries and of the risks associated with football before, during and after they played collegiate football.

161. Both Defendants breached their duties to John Askin by failing to disclose and/or failing to recognize and/or being willfully blind to material information regarding the long-term risks of latent brain disease that arise from repetitive mild brain trauma in football.

162. Both Defendants possessed or should have possessed material information regarding the dangers of latent brain disease caused by concussive and sub-concussive blows to the head in football and failed to disclose this information to John Askin.

163. Both Defendants knew or should have known the proper ways to evaluate, treat and avoid concussive and sub-concussive trauma to Notre Dame football players and failed to develop and implement a proper medical protocol that recognized, identified and treated players properly who had or were suspected to have had a sub-concussive or concussive head impact.

164. Notre Dame breached its duty to John Askin by actively and intentionally teaching Notre Dame football players to use their helmeted head when tackling and blocking.

165. John Askin relied upon the instructions from the Notre Dame coaches to intentionally hit opposing lineman with the front of his helmet and did so at their instruction for the entire time he played college football for Notre Dame.

166. Not once did any Notre Dame coach or trainer ever inform John Askin that the use of his helmeted heads as a weapon in blocking another player placed him at risk of long-term latent brain disease.

167. At all times, the Defendants and particularly Notre Dame had superior knowledge of material information regarding the effect of repeated head impacts in football and the long-term risks of latent brain disease.

168. Such information was not readily available to John Askin, and the Defendants (particularly Notre Dame) knew or should have known that John Askin would act and rely upon the instructions of the Notre Dame coaches, trainers and athletic department personnel on this critical medical issue.

169. Notre Dame also breached its duty to John Askin by administering to him, among other substances, Supac and a medication used on horses to inure him to pain during practices and games.

170. This is evidence of Notre Dame's reckless disregard for the health and safety of John Askin and other Notre Dame football players.

171. Regular doses of Supac before and during practices and games increased John Askin's risk of sustaining a sub-concussive or concussive injury that he did not and would not recognize and the latent neurodegenerative brain disease with which he has been diagnosed.

172. Other medications, including but not limited to the analgesic cream used on horses, meant that John Askin remained in practices and games without recognizing any pain and possibly an injury until the medication had worn off.

173. As a result, John Askin repeatedly sustained hits to the head in practices and games that he did not recognize as concussive and/or sub-concussive events and, therefore, he was exposed to an elevated risk of the latent neurodegenerative brain disease from which he now suffers.

174. Absent the negligence of the Defendant's, the risk of harm to John Askin would have been materially lower, and John Askin would not have sustained repeated hits to the head in practices and games, and his risk of latent brain damage would have been materially lower.

175. At age of 55, John Askin suffers from latent neurodegenerative brain disease. The damages include, but are not limited to, varying forms of neuro-cognitive disability, decline, personality change, forgetfulness, possible early onset Alzheimer's Disease, and CTE, all of which will require extensive medical care.

176. At no time prior to being diagnosed was John Askin ever aware that he had been exposed at Notre Dame to an elevated risk of latent long-term neurodegenerative brain disease at Notre Dame.

177. As a direct and proximate result of the Defendants' negligence, John Askin has incurred damages in the form of permanent brain damage, emotional distress, past and future medical, health care and home care expenses, other out-of-pocket expenses, lost time, and other damages.

178. As a result of their misconduct, the Defendants are liable to the Plaintiff John Askin for the full measure of damages allowed under applicable law.

COUNT II – FRAUDULENT CONCEALMENT
(Plaintiff John Askin vs. Notre Dame and NCAA)

179. Plaintiff John Askin incorporates by reference as if fully set forth herein, Paragraphs 1 through 178 set forth above.

180. The Defendant NCAA and its member institutions, including the Defendant Notre Dame, had a duty to protect their student football players, which included among other things, the duty to warn, disclose and/or otherwise speak to these

student football players, including the Plaintiff John Askin, about the risk of harm and long-term latent health effects of repetitive head impacts while playing or practicing football. This duty included an affirmative duty not to withhold information from John Askin that he would reasonably need to understand the risks he was taking regarding his exposure to the risks of the very latent brain disease from which he now suffers.

181. As early as 1933, and certainly between 1982-86, the time period when John Askin played football at Notre Dame, the NCAA and Notre Dame knew that repetitive head impacts in football games and full-contact practices created a substantial risk of latent brain disease to student-athletes that was similar or identical to the risk to boxers and professional football players.

182. The Defendants were aware of and understood the significance of the published medical literature described in the preceding paragraphs which set forth the serious risk of latent long-term brain disease associated with repetitive impacts to the head to which John Askin was exposed.

183. Despite this knowledge and awareness Notre Dame and the NCAA failed to inform football players, including John Askin, of these risks with the intent of misleading them to believe that the instructions and practices of the Notre Dame coaching staff were safe and effective and did not expose them an elevated risk of the latent brain disease from which John Askin now suffers.

184. Given the Defendants' superior and unique vantage point, John Askin reasonably looked to and relied upon the Defendants for guidance on health and safety issues, such as disclosing and providing him with information, precautionary measures and protocols, and sufficient warnings about the latent brain disease that can and does

arise from sub-concussive and concussive head impacts in college football.

185. As a direct and proximate result of Plaintiff John Askin's reliance upon the Defendants, and as a direct and proximate result of the Defendants' knowing concealment of and/or willful blindness to the dangers of long-term latent brain disease that can and does arise from head impacts in college football, Plaintiff John Askin has suffered and will continue to suffer from latent brain disease and other substantial harm, emotional distress, pain and suffering and economic and non-economic damages that are ongoing and continuing throughout the remainder of his life.

186. As a result of the Defendants' knowing and willful misconduct described above, they are liable to John Askin for the full measure of damages allowed under applicable law.

COUNT III – CONSTRUCTIVE FRAUD
(Plaintiff John Askin vs. Notre Dame and NCAA)

187. Plaintiff John Askin incorporates by reference as if fully set forth herein, Paragraphs 1 through 186 set forth above.

188. Defendant NCAA and its member institutions, including Defendant Notre Dame, had a duty to protect their student athletes, which included, among other things, the duty to warn, disclose and/or otherwise speak to these student athletes, including Plaintiff John Askin, about the risk of harm and long-term health effects of repetitive head injuries while playing football.

189. This duty arose as a part of the unique nature of the relationship between both Plaintiff John Askin and the University of Notre Dame, for whom he played college football, and Plaintiff John Askin and the NCAA, which, among other things, regulated

John Askin's participation in the sport. As a result of these relationships, the NCAA and Notre Dame were in a position to take unfair advantage of Plaintiff John Askin.

190. Defendants' duty to protect the health and welfare of its student athletes, including Plaintiff John Askin, as described herein, is a duty known and relied upon not only by student athletes, including Plaintiff John Askin, but also by the general public, including fans and spectators of college football games, who trust that college football players are being appropriately warned and protected from unreasonable injuries, including the risk of long-term effects of concussive and sub-concussive impacts and latent brain disease.

191. With respect to Defendant Notre Dame, Plaintiff John Askin and the general public also reasonably relied upon and fairly assumed that Defendant Notre Dame would not further increase the risk of such injury to its football players, including Plaintiff John Askin, by providing them with medications, including controlled substances, as further described herein.

192. As early as 1933, and certainly in the 1980s, which includes the time period within which John Askin played football at Defendant Notre Dame, the NCAA and Notre Dame knew that repetitive head impacts in football games and full-contact practices created a substantial risk of harm to student-athletes that was similar or identical to the risk of harm to boxers who receive repetitive impacts to the head during boxing practices and matches, and professional football players, many of whom were forced to retire from professional football because of head injuries.

193. The Defendants were aware of and understood the significance of the published medical literature described in the preceding paragraphs of this Complaint,

which detailed the serious risk of short-term and long-term brain injury associated with repetitive traumatic impacts to the head to which Notre Dame football players are exposed.

194. Despite such knowledge and awareness, Defendants NCAA and Notre Dame concealed and/or otherwise withheld information regarding these risks from their football players, including Plaintiff John Askin, leading Plaintiff John Askin to believe he was safe and that he would not suffer any long-term debilitating cognitive injuries from playing football.

195. Defendants NCAA and Notre Dame concealed and/or otherwise withheld from NCAA football players generally, and Notre Dame football players specifically, the risks of concussive and sub-concussive impacts in NCAA games and practices, including the risks associated with returning to physical activity too soon after sustaining a sub-concussive or concussive event. Concealing and otherwise failing to disclose these risks to their football players, including Plaintiff John Askin, had the same force and effect of Defendants NCAA and Notre Dame misrepresenting facts to their football players, including Plaintiff John Askin.

196. Given the NCAA's and Notre Dame's superior and unique vantage point, John Askin reasonably looked to, and otherwise relied upon, the NCAA and Notre Dame for guidance on health and safety issues, such as disclosing to him and providing him with information, precautionary measures warnings about head injuries and concussions, including the later-in-life consequences, including latent brain disease caused by repetitive head impacts he sustained while a football player at Notre Dame.

197. As a direct and proximate result of Plaintiff John Askin's reliance upon Defendants NCAA and Notre Dame, Plaintiff John Askin has suffered and will continue to suffer substantial injuries, harm, emotional distress, pain and suffering, and economic and non-economic damages that are ongoing and continuing in nature.

198. As a direct and proximate result of the NCAA's and Notre Dame's concealment and/or withholding facts and information, Plaintiff John Askin has suffered and will continue to suffer substantial injuries, harm, emotional distress, pain and suffering, and economic and non-economic damages that are ongoing and continuing in nature.

199. At the same time, Notre Dame and the NCAA gained the unfair advantage of having their football players, including John Askin, continue to play football for them, resulting in profits, prestige and pecuniary gains to Notre Dame and the NCAA at the expense of John Askin and his long-term health.

200. The Defendants' above-described conduct, including the concealment of facts known to them, which they had a duty to disclose to their football players, including Plaintiff John Askin, constitutes fraud in that it was the type of conduct that had a tendency to deceive others, violate confidence and injure public interests.

201. As a further result of the Defendants' above-described conduct, including the concealment of facts known to them, which they had a duty to disclose to their football players, including Plaintiff John Askin, the Defendants NCAA and Notre Dame are liable to John Askin for the full measure of damages allowed under applicable law.

COUNT IV – PUNITIVE DAMAGES
(Plaintiff John Askin v. Notre Dame and NCAA)

202. Plaintiff John Askin incorporates by reference as if fully set forth herein,

Paragraphs 1 through 201 set forth above.

203. KRS 411.184-186 provides for a jury to assess punitive damages in Kentucky. To establish that punitive damages are awardable the Plaintiff John Askin is required to prove to a Jury that "oppression," or "fraud," or "malice" exists.

204. KRS 411.186(1) defines the three words and establishes the requirements for a punitive damage award, as follows:

(a) "Oppression" means conduct, which is specifically intended by the defendant to subject the plaintiff to cruel and unjust hardship.

(b) "Fraud" means an intentional misrepresentation, deceit, or concealment of material fact known to the defendant and made with the intention of causing injury to the plaintiff.

(c) "Malice" means either conduct, which is specifically intended by the defendant to cause tangible or intangible injury to the plaintiff or conduct that is carried out by the defendant both with a flagrant indifference to the rights of the plaintiff and with a subjective awareness that such conduct will result in human death or bodily harm.

205. "Punitive damages" includes exemplary damages and means damages, other than compensatory and nominal damages, awarded against a person to punish and to discourage him and others from similar conduct in the future.

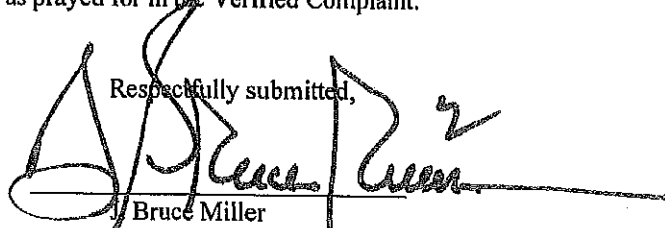
206. A plaintiff shall recover punitive damages only upon proving, by clear and convincing evidence, that the defendant from whom such damages are sought acted toward the plaintiff with oppression, fraud or malice.

207. The Plaintiff John Askin is entitled to punitive damages against the Defendant Notre Dame because the foregoing Paragraphs 1-201 show by clear and convincing evidence that the Defendants acted with oppression against John Askin and fraudulently failed to take action that would prevent the latent brain disease from which he now suffers.

WHEREFORE, the Plaintiff, John Askin, prays for:

1. A judgment in his favor on the above and foregoing Counts; and for
2. Actual financial damages as prayed for as are justified by the evidence at the trial of this case; and for
3. Punitive damages pursuant to the law of Kentucky; and for
4. A trial by jury of this cause of action; and for
5. Their costs herein expended; and for
6. Their attorneys' fees where entitled; and for
7. Any and all other relief to which they may be properly entitled; including, but not limited to, injunctive relief as prayed for in the Verified Complaint.

Respectfully submitted,



Bruce Miller
Norma C. Miller

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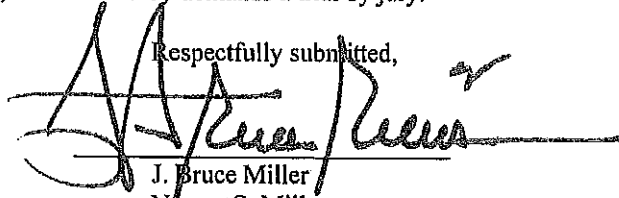
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Counsel for the Plaintiff

DEMAND FOR JURY TRIAL

Pursuant to C.R. 38.02, Plaintiff hereby demands a trial by jury.

Respectfully submitted,



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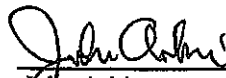
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Fax: (614) 744-2300

Counsel for the Plaintiff

VERIFICATION

I, John Askin, whose rights I hereby have asserted, state that I have read the above and foregoing Verified Complaint and aver under my solemn oath and recognizing that any falsehood could result in my criminal violation of perjury, hereby aver that the statements contained therein are true to the best of my knowledge and belief




John Askin

Subscribed and sworn to before me by John Askin on this the 15 day of February, 2019

COMMONWEALTH OF KENTUCKY)

COUNTY OF JEFFERSON)



Notary Public, Kentucky State at Large
My Commission Expires 4/23/2021